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Message Text

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66604
DRAFTED BY L/M:LAHUMMER:AD
2/13/75 EXT. 20858
APPROVED BY L/M:KEMALMBORG
EUR/NE - PAUL CANNEY (IN DRAFT)
---------- 017821
O 131735Z FEB 75
FM SECSTATE WASHDC
TO AMEMBASSY STOCKHOLM IMMEDIATE
INFO AMEMBASSY LONDON IMMEDIATE

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E.O. 11652: N/A
TAGS: PFOR, CPRS, SW
SUBJECT: EXTRADITION - LARRY J. PINKNEY

REF: STOCKHOLM 732

LONDON FOR LEGATT

1. DEPARTMENT AGREES DENIAL OF PINKNEY EXTRADITION REQUEST WOULD BE UNFORTUNATE FOR REASONS STATED PARA 1 OF REFTEL AND DCM AUTHORIZED TO DRAW ON FOLLOWING COMMENTS, KEYED TO PARAS OF REFTEL, IN DISCUSSION WITH DANELIUS.

2. PARA (2)(1): DEPARTMENT DOES NOT REPEAT NOT BELIEVE SWEDISH COURT CAN, FOR ANY REASON, GO BEHIND JURY VERDICT AND FIND THAT CONVICTION BY UNANIMOUS VOTE "IS MANIFESTLY ERRONEOUS." ARTICLE XI OF TREATY PROVIDES THAT IN CASE OF CONVICTION, ONLY DOCUMENTATION REQUIRED IS CERTIFIED COPY OF SENTENCE. ARTICLE THEREFORE CLEARLY CONTEMPLATES NO REVIEW OF CONVICTION OR VERDICT. BECAUSE OF MERE TECHNICALITY IN THIS CASE THAT NO SENTENCE WAS HANDED DOWN DUE TO PINKNEY'S FLIGHT (WHICH IS NOT UNCOMMON OCCURRENCE) ADDITIONAL DOCU-
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MENTATION WAS SUPPLIED. HOWEVER, ARTICLE 1 OF TREATY CLEARLY

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STATES THAT IN ANY EXTRADITION CASE THE EVIDENCE NEED BE ONLY THAT WHICH WOULD JUSTIFY A PERSON'S COMMITMENT FOR TRIAL, AND THUS IF, ARGUENDO, SCOPE OF COURT REVIEW IN PINKNEY CASE IS BROADER THAN IN CASE WHERE SENTENCE HANDED DOWN MERELY BECAUSE OF LACK OF SENTENCE, COURT STILL CANNOT GO BEYOND ARTICLE 1 OF TREATY WHICH REQUIRES REQUESTING STATE NOT TO PROVE GUILT TO SATISFACTION OF COURT IN REQUESTED STATE BUT ONLY TO PROVIDE SUCH EVIDENCE WHICH WOULD JUSTIFY COMMITMENT FOR TRIAL. DEPARTMENT HAS REVIEWED EVIDENCE SUBMITTED BY SAN FRANCISCO D.A., AND EVIDENCE CLEARLY MEETS PROBABLE CAUSE STANDARD OF ARTICLE 1.

3. PARA (2)(2): ARTICLE XV OF TREATY PROVIDES THAT EXTRADITION IS GOVERNED BY SWEDISH LAW "TO THE EXTENT CONSISTENT WITH THE STIPULATIONS OF THIS CONVENTION AND WITH RESPECT TO MATTERS NOT COVERED HEREIN." ARTICLE V OF TREATY PROVIDES THAT EXTRADITION SHALL NOT BE GRANTED "IF THE OFFENSE IS REGUARDED BY THE REQUESTED STATE AS A POLITICAL OFFENSE OR AS AN OFFENSE CONNECTED WITH A POLITICAL OFFENSE." PROVISION CITED OF SWEDISH EXTRADITION LAW IS NOT CONSISTENT WITH TREATY EXCEPTION FOR POLITICAL OFFENSES AND IS IN FACT A CONSIDERABLE EXPANSION OF THE TRADITIONAL POLITICAL OFFENSES EXCEPTION. IT WOULD APPEAR, SINCE THE CITED PROVISION OF THE SWEDISH EXTRADITION ACT WAS IN FORCE AT TIME OF 1961 TREATY, THAT IF SWEDEN CONSIDERED THE LAW AS AUTHORITATIVE AS THE TREATY THE TREATY WOULD HAVE RECOGNIZED IN ARTICLE V THE FURTHER EXCEPTIONS TO EXTRADITION IN SWEDISH LAW.

4. PARA 3: DEPARTMENT DOES CONCUR THAT GRAND JURY TRANSCRIP AND OTHER DOCUMENTATION REPRESENT ADEQUATE "ADDITIONAL DOCUMENTATION" MENTIONED IN ARTICLE 11.

5. PARA 4: IT IS NOT COMMON FOR FOREIGN COURTS OR GOVERNMENTS TO DENY EXTRADITION OF A CONVICTED PERSON. IN SUCH INSTANCES, COURTS NORMALLY CONFINE THEIR REVIEW TO DETERMINATION THAT PERSON BEFORE THE COURT IS THE SAME PERSON SOUGHT, AND THAT ADEQUATE DOCUMENTATION OF CONVICTION HAS HAS BEEN PRESENTED. ONLY EXCEPTION WHICH COMES TO MIND LIMITED OFFICIAL USE

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ARE CASES WHERE A FOREIGN GOVERNMENT ASKS EXTRADITION OF A PERSON LOCATED IN U.S. WHO HAS BEEN CONVICTED IN ABSENTIA. U.S. TREATS THESE AS CASES OF PERSONS WANTED FOR AN OFFENSE AND WE SEEK A GUARANTEE FROM REQUESTING STATE THAT PERSON WILL BE TRIED AGAIN ON CHARGES. SINCE U.S. HAS NO IN ABSENTIA PROCEEDINGS THIS IS NO PROBLEM WITH REQUESTS BY U.S. TO OTHER COUNTRIES.

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6. PARA 5: PROCEDURE OF SWEDISH COURT IN INVITING PERSONAL TESTIMONY FROM PINKNEY TO REBUT CHARGES AND CONVICTION WAS HIGHLY UNUSUAL. SINCE EXTRADITION IS NOT CONTEMPLATED AS A FULL TRIAL ON MERITS, BUT ONLY A DETERMINATION OF PROBABLE CAUSE TO BELIEVE THE PERSON HAS COMMITTED A CRIME, SITUATION IS ONE WHERE DECISION IS USUALLY MADE SOLELY ON BASIS OF DOCUMENTS, WITH TESTIMONY OF LIVE WITNESSES EXTREMELY RARE. IF EXTRADITEE IN U.S. COURTS WISHES TO TESTIFY, HIS ROLE IS LIMITED TO ARGUING THAT REQUESTING STATE HAS NOT SHOWN PROBABLE CAUSE TO BELIEVE HE HAS COMMITTED THE CRIME, OR ARGUING HE IS NOT THE PERSON THE REQUESTING STATE HAS IDENTIFIED; ON THAT THE CRIME COMES WITHIN ONE OF THE EXCEPTIONS TO EXTRADITION. HE IS NOT ALLOWED TO ARGUE MERITS OF CASE OR PRESENT DEFENSES. THAT IS FOR HIM TO ARGUE AT HIS TRIAL. SO, PROCEDURE OF SWEDISH COURT IN ALLOWING PINKNEY TO ARGUE MERITS OF CASE AND PRESENT A DEFENSE IS CONTRARY TO INTERNATIONAL EXTRADITION PRACTICE.

7. PARA 6: IF PINKNEY'S EXTRADITION IS DENIED BASED ON HIS STORY IN FACE OF UNANIMOUS VERDICT OF GUILTY AND HIS UNSUPPORTED ASSERTIONS OF RACIAL PERSECUTION, STANDARD OF PROOF REQUIRED BY ARTICLE 1 OF TREATY, INTERPRETATION OF POLITICAL OFFENSES EXCEPTION IN ARTICLE V, AND ENUMERATION OF NECESSARY DOCUMENTATION OF ARTICLE XI WILL ALL BE CALLED INTO QUESTION. ONE WOULD INDEED BEGIN TO WONDER WHETHER TREATY CAN BE RELIED ON AT ALL. IT WOULD APPEAR DEPARTMENT WOULD BE IN POSITION OF TAKING EACH CASE ON AN AD HOC BASIS DUE TO INCONSISTENCY IN INTERPRETATION OF TREATY AND COURT'S ADHERENCE OR NONADHERENCE TO ACCEPTED EXTRADITION PRACTICE FROM ONE CASE TO NEXT. INGERSOLL

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